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 CITY OF EAST PALO ALTO

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

PALO MOBILE ESTATES ASSOCIATES,  
 a California limited partnership,

Plaintiff,

v.

CITY OF EAST PALO ALTO, a municipal  
 corporation; DOES 1 through 10, inclusive,

Defendants.

CASE NO: C 07-03601 PJH

**SECOND JOINT CASE MANAGEMENT  
 CONFERENCE STATEMENT OF  
 DEFENDANT CITY OF EAST PALO  
 ALTO AND PLAINTIFF PALO MOBILE  
 ESTATES ASSOCIATES**

Superior Court Action Filed: June 12, 2007  
 Removed to Federal Court: July 12, 2007  
 Trial Date: None Set

The Defendant City of East Palo Alto (“the City”) and the Plaintiff Palo Mobile Estates Associates (“PME”) hereby submit the following joint case management conference statement for the case management conference scheduled for April 17, 2008 at 2:30 p.m.

**Introduction and Update of Case Status**

This case is a challenge to an ordinance enacted by the City of East Palo Alto that created regulations for applications to convert rental mobilehome parks into resident-owned mobilehome parks (“the Ordinance”). PME owns a rental mobilehome park in the City which it would like to convert into a resident-owned mobilehome park. PME seeks a declaration that the Ordinance is invalid, an injunction to prevent the City from enforcing the Ordinance, and monetary compensation because PME contends the Ordinance, as well as the moratorium City had imposed on mobilehome park conversions within the City prior to the adoption of the Ordinance (“the Moratorium”), has effected a taking of its property without just compensation. On November 13, 2007, PME filed a petition for a writ of mandate in the San Mateo County Superior Court challenging the validity of the Ordinance under California law.

At the case management conference on December 6, 2007, this Court stayed this matter at the request of both parties pending the outcome of the concurrent petition for a writ of mandate in the San Mateo County Superior Court. At the time of the previous case management conference, the parties were working on a proposed briefing schedule and hearing date for the petition for a writ of mandate and hoped to have the hearing in March. The parties worked out a briefing schedule that was accepted by the state court, but the hearing was set for April 11, 2008.

By the time of this case management conference, the hearing should have occurred, and the parties should have an understanding of the state court’s decision, although we will not have a final judgment. The parties therefore anticipate asking this Court to continue the stay for a further 60 days.

**Specific Issues Required to Be Addressed in This Statement by the**

**Standing Order for Joint Case Management Conference Statements**

**1. *Jurisdiction and Service:***

This Court has subject matter jurisdiction because the Third Cause of Action arises under the Fifth and Fourteenth Amendments of the United States Constitution, asserting a taking of the plaintiffs’ property for a non-public purpose and without just compensation.

1 All parties have been served.

2 **2. Facts:**

3 PME owns a rental mobilehome park in the City of East Palo Alto that it would like to convert  
4 into a resident-owned mobilehome park.

5 On March 13, 2007, the City Council of the City of East Palo Alto enacted a 45-day  
6 Moratorium on the conversion of rental mobilehome parks into resident-owned parks. The stated  
7 reason for the Moratorium was to prepare regulations for such conversions. On April 24, 2007, the  
8 City Council of the City of East Palo Alto extended the Moratorium to July 27, 2007. During the  
9 Moratorium, the City would accept and process applications for the conversion of rental mobilehome  
10 parks into resident-owned parks, but it would not approve such applications.

11 On June 12, 2007, PME filed two lawsuits in the San Mateo County Superior Court  
12 challenging the Moratorium. One lawsuit petitioned for a writ of mandate invalidating the  
13 Moratorium, while the other lawsuit sought declaratory relief, an injunction, and monetary  
14 compensation for damages allegedly suffered by PME due to the Moratorium. PME alleges that it  
15 suffered damages of not less than \$14,625,000 due to the Moratorium. The lawsuit seeking damages  
16 was removed to this Court because PME alleged that the Moratorium was a taking of property without  
17 compensation in violation of the United States Constitution.

18 In the lawsuit seeking a writ of mandate that remained in the San Mateo County Superior  
19 Court, PME brought a motion for the writ. The motion was heard on July 20, 2007, and the court  
20 denied the writ "without prejudice to renew because the claim is not ripe and the Moratorium will  
21 expire on July 27, 2007." Judgment was entered in favor of the City on October 22, 2007.

22 The Moratorium expired on July 27, 2007 and was not renewed by the City.

23 During the pendency of the Moratorium, PME submitted documents for an application to  
24 convert its mobilehome park from a rental park into a resident-owned park. The City's Planning  
25 Manager determined that the application was incomplete. PME disagreed with this determination, but  
26 submitted some of the further documentation requested by the City. The Planning Manager has  
27 determined that the application is still incomplete. PME has appealed this determination to the  
28 Planning Commission. PME may seek a writ of mandamus to compel the City to deem the application

1 complete and set it for hearing pursuant to Government Code section 66427.5.

2 On July 17, 2007, the City Council of the City of East Palo Alto enacted the Ordinance. On  
3 November 13, 2007, PME filed a new petition for a writ of mandate in the San Mateo County Superior  
4 Court challenging the validity of the Ordinance, and PME supplemented its complaint in this action to  
5 add a claim for damages, alleging that the Ordinance is a taking of its property, and seeking  
6 declaratory and injunctive relief against the Ordinance.

7 **3. Legal Issues:**

8 a. Whether the Ordinance is preempted by, or conflicts with, section 66427.5 of the  
9 California Government Code. *El Dorado Palm Springs, Ltd. v. City of Palm Springs*, 96 Cal. App. 4th  
10 1153 (2002).

11 b. Whether the Ordinance effected a taking of PME's property without just compensation  
12 in violation of the Fifth and Fourteenth Amendments to the United States Constitution and Article I,  
13 Section 19 of the California Constitution.

14 c. What the proper method for determining and calculating just compensation would be if  
15 the Court determines the Ordinance has effected a taking of PME's property without just  
16 compensation. *Palazzolo v. Rhode Island*, 533 U.S. 606, 617-18 (2001); *Penn Cent. Transp. Co. v.*  
17 *City of New York*, 438 U.S. 104 (1978).

18 d. Whether PME's takings claim is ripe for review. *Kinzli v. City of Santa Cruz*, 818 F.2d  
19 1449, 1453-54 (9th. Cir. 1987).

20 **4. Motions:**

21 The City expects to bring a motion for summary judgment.

22 **5. Amendment of Pleadings:**

23 No further amendments to the pleadings are anticipated.

24 **6. Evidence Preservation:**

25 The parties have not taken any specific actions to preserve evidence.

26 **7. Disclosures:**

27 The parties have not made the initial disclosures required by Rule 26(a) of the Federal Rules of  
28 Civil Procedure because the case has been stayed pending the outcome of the petition for a writ of

1 mandate in the San Mateo County Superior Court.

2 **8. Discovery:**

3 No discovery has occurred in this case because the case has been stayed pending the resolution  
4 of the petition for a writ of mandate by the San Mateo County Superior Court.

5 **9. Class Actions:**

6 This is not a class action.

7 **10. Related Cases:**

8 As discussed above, there was a related action in the San Mateo County Superior Court (*Palo*  
9 *Mobile Estates Associates v. City of East Palo Alto*, case number CIV 463681). It was a petition for a  
10 writ of mandate that sought to overturn the Moratorium. The court denied the writ “without prejudice  
11 to renew because the claim is not ripe and the moratorium will expire on July 27, 2007” and judgment  
12 was entered in favor of the City.

13 On November 13, 2007, PME filed a new petition for a writ of mandate in the San Mateo  
14 County Superior Court. (*Palo Mobile Estates Associates v. City of East Palo Alto*, case number CIV  
15 467731.) This new petition challenges the Ordinance. It has been fully briefed and is set to be heard  
16 on April 11, 2008.

17 **11. Relief:**

18 PME seeks:

- 19 a. A declaration that the Ordinance violates section 66427.5 of the California
- 20 Government Code and is therefore invalid,
- 21 b. An injunction to prohibit the City from enforcing the Ordinance, and
- 22 c. Damages of at least \$14,625,000.

23 The City contends that the Ordinance is valid and that therefore the declaratory relief and the  
24 injunctive relief sought by PME should be denied. The City also contends that PME’s claim for  
25 damages cannot succeed because the Ordinance does not constitute a taking and because this claim is  
26 not ripe for review and cannot be ripe for review until PME has at least submitted a complete  
27 application and had that application denied.

1 The City further contends that if PME can establish that the Ordinance constitutes a taking, the  
2 City contends that damages will be difficult to determine because they are very speculative. PME will  
3 have to show that it would have obtained profits that, but for the temporary Moratorium, it will now  
4 not obtain.

5 **12. Settlement and ADR:**

6 The parties agree that ADR is not practicable in this case. The case turns on the legality of  
7 legislative actions taken by the City. The City's decision is rooted in matters of public policy, and is  
8 not one that the City can agree to change.

9 **13. Consent to Magistrate Judge for All Purposes:**

10 The City consents to all further proceedings, including trial and judgment, being conducted by  
11 a magistrate judge. PME does not.

12 **14. Other References:**

13 This case is not suitable for binding arbitration, a special master, or the Judicial Panel on  
14 Multidistrict Litigation.

15 **15. Narrowing of Issues:**

16 The City suggests that the trial be bifurcated between liability and damages and that there first  
17 be a trial on liability. If liability is found, then the parties can conduct discovery into damages, which  
18 is likely to depend on experts, and then there would be a trial to determine damages.

19 **16. Expedited Schedule:**

20 This case is not appropriate for expedited procedures.

21 **17. Scheduling:**

22 The parties request that the case be stayed pending the ruling of the Superior Court on PME's  
23 petition for a writ of mandate. When the case restarts a further case management conference can be  
24 held to determine scheduling. The parties suggest continuing the case management conference for 60  
25 days.

26 **18. Trial:**

27 If the trial is bifurcated, each phase of the trial should take two to three days. PME seeks a  
28 jury trial on the issue of damages.

1           **19.    Disclosure of Non-Party Interested Entities or Persons:**

2           For the City: The City has not filed a “Certification of Interested Entities or Persons” because  
3 it is a government entity. However, the City considers the current residents of the Palo Mobile Estates  
4 mobilehome park to be interested parties who could be substantially affected by the outcome of this  
5 case.

6           For PME: PME filed a “Certification of Interested Entities or Persons” on October 25, 2007.

7 The partners of Palo Mobile Estates Associates are as follows:

- 8           a.     Allene Kirchner
- 9           b.     Coletta S. Sitney & Jan M. Miller  
10                Trustees, U/T/D/ DTD 10/9/87
- 11           c.     Betty Watson
- 12           d.     Lawrence Small & Florence Small  
13                As Joint Tenants WROS
- 14           e.     Harold Pat Paterson
- 15           f.     Glen R. Johnson & Julie Dees Johnson  
16                TTEES Johnson Family Trust dtd 9/30/99
- 17           g.     The 2005 Ellis Family Trust  
18                H. James Ellis & Vicki M. Ellis, TTEES
- 19           h.     Bypass Trust of the MJAK Family Trust  
20                Patrick B. Impett, Trustee
- 21           i.     Wendy Robinson
- 22           j.     Seena N. Hoose Separate Property Trust  
23                Seena N. Hoose, Trustee
- 24           k.     Gary Light, Trustee for Vic Hubbard  
25                Speed & Marina Corp., PST
- 26           l.     Alice M. Brady
- 27           m.     Douglas Kirchner
- 28           n.     Diane Kirchner Scott
- o.     Jan Kirchner Carrier

1 p. Ira & Jeanne Andersen Trust 82749

2 q. Ronya Robinson

3 r. Sandra Osborn

4 s. Jean Walter

5  
6 **20. *Other Matters:***

7 None.

8 Respectfully submitted,

9  
10 Dated: April 10, 2008

JARVIS, FAY & DOPORTO, LLP

11  
12 By: /s/ Benjamin P. Fay  
13 Benjamin P. Fay  
14 Attorneys for Defendant  
CITY OF EAST PALO ALTO

15 Dated: April 10, 2008

GILCHRIST & RUTTER

16  
17  
18 By: /s/ Thomas W. Casparian  
19 Thomas W. Casparian  
20 Attorneys for Plaintiff  
PALO MOBILE ESTATES ASSOCIATES